

stipulation. Campbell v. Werner, 232 So.2d 252 (Fla. 3d DCA 1970). No party has claimed that RTC's acceleration of the debt herein at issue was improper,

RTC was also entitled to prevail on the issue of the seniority of its mortgage lien. The owner and holder of a recorded valid mortgage encumbering real property has a lien superior in dignity and right of any lien created by a subsequently recorded mortgage, claim, or lien attaching to the property through the mortgagors, their successors, assigns, and tenants. Bullard v. Fender, 192 So.2d 167 (Fla. 1939); County of Pinellas v. Clearwater Federal Savings and Loan Association, 214 So.2d 525 (Fla. 2d DCA 1968). There cannot be a dispute that RTC's mortgage lien was prior to the other liens encumbering the subject property.

Since the general rule is that a lien filed "first in time" is "first in right," there is no genuine issue of fact as to the priority of RTC's mortgage over the other encumbrances on the subject property. United States v. First Federal Savings and Loan Association of St. Petersburg, 155 So.2d 192 (Fla. 2d DCA 1963); Richardson Tractor Company v. Square Deal Machinery and Supply Co., 149 So.2d 388 (Fla. 2d DCA 1963). There is also no genuine issue of material fact as to the amount due and owing by defendant Riverwalk to RTC on the note and mortgage.

RTC was thus entitled to the entry of a summary judgment of foreclosure as a matter of law and to prevent the impairment of its security. Flagship Bank of Orlando v. Bryan, 384 So.2d. 323 (Fla. 5th DCA 1980); Raskin v. Otten, 273 So.2d 433 (Fla. 3d DCA 1973); Heimer v. Albion Realty & Mortgage. Inc., 300 So.2d 31 (Fla. 3d DCA 1974); \$687.06, Fla. Stat.

On August 31, 1991, The United States District Court did issue the Summary Judgment of Foreclosure, (Appendix: Foreclosure Order)

where at paragraph 11, (App. 4a) Marina Club has been forever foreclosed and barred from ever bringing any claim, lien, or other rights under a Document which was between the Developer Riverwalk and condominium purchasers and recorded subsequent to the mortgage.

COMPELLING REASONS FOR GRANTING WRIT

A federal district court, possessing only that power authorized by Constitution and statute, lacks jurisdiction over a claim for breach of a contract, part of the consideration for which was dismissal of an earlier federal suit. No federal statute makes that connection (if it constitutionally could) the basis for federal court jurisdiction over the contract dispute. Moreover, the doctrine of ancillary jurisdiction does not apply, since the facts to be determined with regard to the alleged breach of contract are quite separate from the facts to be determined in the principal suit, and automatic jurisdiction over such contracts is in no way essential to the conduct of federal court business. Julian v. Central Trust Co., 193 U.S. 93, 113-114, distinguished. If the parties wish to provide for the court's jurisdiction to enforce a dismissal-producing settlement agreement, they can seek to do so. In the event of dismissal pursuant to Federal Rule of Civil Procedure 41(a)(2), the court may, in its discretion, make the parties' compliance with the terms of the settlement agreement (or retention of jurisdiction over the agreement) part of its order. When dismissal occurs pursuant to Rule 41(a)(1)(ii), the District Court is empowered (with the consent of the parties) to incorporate the settlement agreement in the order or retain jurisdiction over the settlement contract itself. Absent such action, however, enforcement of the settlement agreement is for state courts, unless there is some independent basis for federal jurisdiction.

Respondent has in their reply (R.Br. Page 9,10) injected the theory that the District Court did have independent "Federal Jurisdiction" because the amount in question exceeds \$75,000. along with diversity of citizenship of the named two parties.

From the litigation record(App.pg. 9a) of the parties it must now be noted that the respondent has maintained an identical action in Florida state courts requesting the same and identical relief as was requested in their federal counter-claim suit with state court jurisdiction obtained over petitioner.

In that state action, first filed January 7, 2002 the respondents did serve a summons (App. Pg 7a) on the petitioner and received jurisdiction of that state claim under F.S.48.071, 48.161, 48.181, and 48.193.

Respondents have filed a total of three amendments to that state action, continuing to maintain petitioners as defendants, the latest of which was filed on October 3, 2005 naming as defendants Abdul Razak (a citizen of Karachi, Pakistan) and six other defendants who are either residents or conducting business within the state of Florida.

In their state action the same identical claims as were presented in that federal counter-claim complaint, and which were supposedly extinguished by this mediation agreement between the petitioner and respondent, (App. Pg 9a) are now active again with additional parties being forced to respond.

REASON FOR GRANTING PETITION

A mediation agreement is to be final and must resolve the issues before the Court and leave no further litigation to be required to consummate the agreement or litigate. Respondent had asked the District Court in their complaint for a quiet title against Abdul Razak, the mortgagee but avoided the

requirement that Razak be named as a defendant and be properly served. Then without granting Razak or the other Florida defendants a right to defend and participate in that mediation and proposed agreement deceived the District Court into believing that petitioner and respondent were the only parties, but as evidenced in the appendix has chosen to simultaneously prosecute identical claims in two forums at the same time. The agreement did not resolve the litigation and required acts that could not be performed by the petitioner without further litigation and the respondent's claims continue in the state court (Appendix State Claims).

The District Court was without "Subject Matter Jurisdiction" over an agreement unless it was as a separate litigation for "Breach of Contract" with "Independent" "Federal Jurisdiction". Obtaining jurisdiction over the petitioner in state court by the respondent served as a waiver of that "Independent Federal Jurisdiction" thus the District Court had no "Independent or Subject Matter Jurisdiction" and that "Final Order" was a ruling in the opposite of all previous rulings of this Supreme Court requiring supervisory control and correction by this Supreme Court and Issuance of that requested Writ of Certiorari vacating the Orders of the lower courts and remanding to the District Court for trial and/or dismissal for lack of jurisdiction.

Respectfully submitted,

/s/ _____
Mohammed Husein Bhadelia
Mohammed Farooq Bhadelia
P.O. Box 290007
Tampa, Florida 33687-0007
(813) 933-7848
Petitioners

Case Number: 05-473

=====

IN THE

Supreme Court of the United States

=====

PETITIONER'S

APPENDIX

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

RESOLUTION TRUST CORPORATION,
as Receiver for City Savings Bank, F.S.B.,
Plaintiff,
v. Case No. 90-1090-CIV-T-15C

RIVERWALK INVESTMENTS, INC., a
Florida corporation; et al.,
Defendants.

SUMMARY JUDGMENT OF FORECLOSURE

This cause came before this Court on the motion for summary judgment of foreclosure by plaintiff, Resolution Trust Corporation, as Conservator for City Savings, F.S.B., and the Court having reviewed the file in this cause, considered the moving papers and any papers in opposition thereto, and the Court being otherwise fully advised in the premises, it is thereupon

ORDERED:

1. This Court has jurisdiction of this action pursuant to 28 U.S.C. Section 1345 and 12 U.S.C. Section 1819, as amended by the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ('FIRREA'), Pub. Law No. 107-73 103 Stat. 183. Venue is proper in this district pursuant to 28 U.S.C. Section 1392(b).

2. Plaintiff has established by competent proof the allegations of its Complaint and has established a valid basis to foreclose upon the note and mortgage at issue in this action.

3. Plaintiff is entitled to foreclosure of its mortgage lien and said lien is prior in

date and superior in dignity to the rights, title, interests, claims or demands of the defendants herein, upon the property described in Exhibit "A" attached hereto.

4. Plaintiff is now due the following sums under the note and mortgage at issue herein: \$8,875,092.00 as principal under the note, \$6,215,739.18 as interest accrued through November 16, 1990, plus attorneys' fees of \$16,324.70, and costs of \$2,410.57, making a total sum of \$15,109,566.45, which amount shall bear interest at the rate of 12%, plus court costs now taxed.

5. That unless the total sum of money, with interest at the rate described in paragraph 4 above, found to be due herein and all costs accrued subsequent to this judgment are paid within ten (10) days from the date of this judgment to the RTC or its attorneys, then the property described in Exhibit "A" hereto shall be sold by Special Master, and such Special Master is hereby authorized and directed to sell said property at a Public Sale, after duly and properly publishing notice of sale pursuant to 28 U.S.C. 2002, to the highest bidder for cash, except as set forth below, at the front steps of the United States District Court for the Middle District of Florida, Tampa Division, 611 North Florida Avenue, Tampa, Florida.

6. Immediately after the Special Master closes the bidding at the foreclosure sale, the Special Master shall require the successful bidder (subject to paragraph 8 below if RTC is the high bidder) to post with the Special Master a bid deposit of 20% of the successful bid. The deposit must be in the form of cash or a Cashier's Check. In the event the successful bidder fails to make the required bid deposit, the Special

Master shall immediately resell the property and the same bid deposit requirements shall apply upon the resale. The Special Master shall resell the property using this bid deposit procedure as often as is required to produce a successful bidder above to post the required bid deposit. Upon any resale, the Special Master is instructed to refuse to accept the bid of any person who was the successful bidder at prior sale and failed to make the required bid deposit, unless that bidder demonstrates to the Special Master, at the time of the bid that the bidder has the funds that would be required for the bid deposit if the bid was successful. Bid deposits shall be credited against the sales price. If the successful bidder fails to pay the balance of the sales price by 2:00 p.m. the day of the sale, the Special Master shall renote the sale and pay all costs of the sale from the bid deposit. Any remaining portion of the bid deposit shall be applied toward the Judgment. The Special Master shall announce these bid deposit requirements immediately before the sale.

7. Plaintiff RTC shall advance all subsequent costs of this action and shall be reimbursed for them by the Special Master.

8. Plaintiff RTC may be a bidder for the purchase of the property at the sale. If RTC is the purchaser at the sale, the Special Master shall credit on the bid of RTC the total sum found to be due to RTC, or such portion thereof as may be necessary to pay fully the bid of RTC. No bid deposit shall be required of RTC except to the extent its bid exceeds the credit provided for in this paragraph.

9. After confirmation of the sale, the Special Master shall distribute the proceeds

of the sale, as far as they are sufficient, by paying: first, all of RTC's costs and expenses of these proceedings subsequent to the entry of this Summary Judgment, second, the total sum herein found to be due to RTC plus interest on the total sum herein found to be due at twelve (12%) percent from the date of this Summary Judgment to the date of the issuance of the Special Master's deed herein.

10. If the total sum realized on the sale exceeds the total of the sums ordered to be paid by paragraph 4 of this Summary Judgment, the excess shall be paid into the Registry of the Court to thereafter be disbursed as this Court shall hereafter direct.

11. Upon confirmation of sale, defendants and all persons claiming under or against them since the filing of the Notice of Lis Pendens are forever barred and foreclosed of and from any and all right, title interest, claim or demand of any kind or nature whatsoever, or equity of redemption of, in and to the property described in Exhibit "A" attached hereto and the purchaser at the sale shall be let into immediate possession of such property.

12. That Joseph W. Castello, be, and he hereby is, appointed Special Master in this action to conduct the public sale as is set forth herein, without the requirement of a bond.

13. Jurisdiction of this action is retained to enter such further orders as may be just, proper, and necessary.

DONE AND ORDERED in Chambers at the United States Courthouse, Middle District of Florida, Tampa, Hillsborough County, Florida this day 23rd of August, 1991.

/S/WILLIAM CASTAGNIA

UNITED STATES DISTRICT JUDGE

cc: All Counsel and parties

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RETURN OF SERVICE

State of Florida
County of Hillsborough
Circuit Court Case Number: 02-00307

Plaintiff:
Marina Club of HOA, Inc
vs.
Defendant:
Mohammed Husein Bhadelia, et al

For:
Ronald Cotterill, Esquire
KASS. SHULER, SOLOMON, SPECTOR, FOYLE &
1505 N. Florida Avenue
Tampa, Florida 33602

Received by J. D. Church & Associates on the
11th day of January, 2002 at 6:00 pm to be
served on MOHAMMED HUSEIN BHADELIA 2424 West
Bay Boulevard Unit L-106 Tampa, FL 33607.

I, Frank St. Clair, do hereby affirm that on
the 14th day of January, 2002 at 4:00 pm, I:

Served the within named by attaching a true
copy of the SUMMONS AND COMPLAINT with the
date and hour of service endorsed thereon by
me, to a conspicuous place on the property
described within, having first attempted
service on 01-12-02 at 10:10 AM pursuant to
State Statutes.

Additional Information pertaining to this
Service:

Attempted to Serve; 01-12-02 10:10 AM, 01-12-02 5:00 PM, 01-14-02 8:30AM and 1100AM.

I certify that I am over the age of 18, have no interest in the above action, and am a Certified Process Server, in good standing, in the judicial circuit in which the process was served.

/s/Frank St.Clair

Frank St Clair

Process Server

J.D. Church & Associates

7408 Commerce Center

Riverview, FL 33569

(813) 672-9492

Our Job Serial Number: 2002000063

**IN THE CIRCUIT COURT OF THE THIRTEENTH
JUDICIAL CIRCUIT OF THE STATE OF FLORIDA. IN
AND FOR HILLSBOROUGH COUNTY
CIVIL DIVISION**

THE MARINA CLUB OF TAMPA HOMEOWNERS
ASSOCIATION INC,. a Florida corporation.
Plaintiff.

vs. CASE NO.: 02-CA-00307
Division J

ABDUL RAZAK, et al

Defendants.

**FOR LEAVE MOTION TO AMEND COMPLAINT AND TO
FILE PLAINTIFF'S THIRD AMENDED COMPLAINT**

COMES NOW the Plaintiff. The Marina Club of Tampa Homeowners Association. Inc. ("Marina Club"), by and through its undersigned attorneys and pursuant to Florida Rule of Civil Procedure 1.190(a) files this. its Motion for Leave to Amend Complaint and to File Plaintiffs Third Amended Complaint, and states in support thereof as follows:

1. The Second Amended Complaint was filed in this matter on or about March 7, 2003, against Defendants **Mohammed Husein Bhadelia**. Farooq Bhadelia. Dwayne Gillispie and Abdul Razak.
2. Defendant Dwayne Gillispie was dropped as a party by Notice filed on or about April 17, 2003.
3. A Final Judgment was entered by the

United States District Court in that matter styled **Mohammed Husein Bhadelia: et al. v. Marina Club of Tampa Homeowners Association, Inc.; et al., Case No. 8:03-cv1189-T-26TGW** (the "Federal Court action") on or about **February 24, 2005**. The Final Judgment entered in the Federal Court action quieted title to the subject property' in the Marina Club as against Mohammed Husein Bhadelia.

4. The entry of the Final Judgment in the Federal Court action has made moot some of the issues raised in the Second Amended Complaint as against Defendants Mohammed Husein Bhadelia and Farooq Bhadelia.

5. By Notice of Dropping Parties, dated **September 13, 2005**, Plaintiff **Marina Club** has dropped Defendants **Mohammed Husein Bhadelia** and **Farooq Bhadelia**.

6. Other events which have occurred subsequent to the filing of the Second Amended Complaint have required that additional issues be raised against Defendant Abdul Razak and that a cause of action to quiet title be stated against proposed Defendants Rob Turner, Doug Belden and certain holders of tax certificates as to the Subject Property.

7. The action is not at issue and is not set for trial so that allowing the amendment will not delay these proceedings nor cause any prejudice to the Defendants.

8. A copy of the proposed Third Amended Complaint is attached hereto as Exhibit "A".

WHEREFORE, Marina Club prays this Court enter an Order:

1. Permitting it to file a Third Amended Complaint in this action and
2. Granting such other relief as this Court deems necessary and proper.

/s/

SUSAN K. SPURGEON. ESQ..

Florida Bar No. 478229

PENNINGTON. MOORE. WILKINSON, BELL
& DUNBAR, P.A.

2701 N. Rocky Point Drive, Suite 930

Tampa. Florida 33607

Phone: (813) 639-9599

Dated: **October 3, 2005**

IN THE CIRCUIT COURT OF THE THIRTEENTH
JUDICIAL CIRCUIT OF THE STATE OF FLORIDA. IN
AND FOR HILLSBOROUGH COUNTY
CIVIL DIVISION

THE MARINA CLUB OF TAMPA HOMEOWNERS
ASSOCIATION, INC., a Florida corporation.

Plaintiff,

vs.

CASE NO.: 02-CA-000307

Division J

ABDUL RAZAK; ROB TURNER, PROPERTY
APPRAISER OF HILLSBOROUGH COUNTY.
FLORIDA; AND DOUG BELDEN, TAX COLLECTOR
OF HILLSBOROUGH COUNTY. FLORIDA.
WACHO VIA-COLLECTION AGENT FOR SASS
MUNI-IV, LLC; HEARTWOOD 14, LLC;
CATHERINE III LLC: and MTAG FOR COLORADO A
MGT LLC,
Defendants.

THIRD AMENDED COMPLAINT TO QUIET TITLE

COMES NOW the Plaintiff, THE MARINA CLUB OF
TAMPA HOMEOWNERS' ASSOCIATION. INC. ("MARINA
CLUB") by and through its undersigned
attorneys, and sues the Defendants, ABDUL
RAZAK ('RAZAK'); ROB TURNER. Property
Appraiser of Hillsborough County, Florida
('ROB TURNER'); and DOUG BELDEN, Tax
Collector of Hillsborough County, Florida
('DOUG BELDEN'); WACHOVIA-COLLECTION AGENT
FOR SASS MUNI-IV, LLC: HEARTWOOD 14. LLC;
CATHERINE III LLC: and MTAG FOR COLORADO A
MGT LLC and states in support thereof as
follows:

JURISDICTION AND VENUE

1. This is an action to quiet title. This Court has jurisdiction of the subject matter pursuant to **Florida Statutes Chapter 65.**

2. The property which is the subject of this action is legally described in attached Exhibit 1. and is referred to hereafter as the "Subject Property".

3. Plaintiff. **MARINA CLUB.** is a not for profit Florida corporation, with its principal place of business in Tampa. Hillsborough County. Florida.

4. Defendant **RAZAK.** on information and belief, **is a citizen of Pakistan** whose last known address is do 6001 Beach Road. Number 19-06 Golden Rule Tower. Singapore 199589.

5. Defendant **RAZAK** is subject to the jurisdiction of the courts of this State pursuant to **Florida Statutes § 4S.193(1)(c)** in that he claims to own and/or hold a mortgage on the Subject Property.

6. Defendant **ROB TURNER** is the Property Appraiser for Hillsborough County, Florida.

7. Defendant, **DOUG BELDEN,** is the Tax Collector for Hillsborough County. Florida.

8. Defendant, **WACHOVIA-COLLECTION AGENT FOR SASS MUNI-IV, LLC,** is an inactive Foreign Limited Liability company with its last known address at 123 South Broad Street, **Philadelphia, Pennsylvania 19109.**

9. Defendant. **HEARTWOOD 14 LLC,** is a Florida Limited Liability company with its principal place of business in Fort Lauderdale. Florida.

10. Defendant. **Catherine III LLC.** a Limited Liability company in the State of Florida c/o Gulf Group Holdings Acquisitions & Applications. Inc., a Florida corporation, with its principal place of business in

Miami, Florida.

11. Defendant. MTAG FOR COLORADO A MGT LLC. is a Florida Limited Liability company with its principal place of business in Ft. Lauderdale. Florida.

12. The Subject Property is located in Tampa, Hillsborough County, Florida. and venue is proper in Hillsborough County.

DERAIGNMENT OF TITLE

13. On December 16, 1982. Riverwalk. LTD.. a Florida Limited Partnership by Riviera Associates. LTD., a Florida Limited Partnership and its general partner. Riv Corp.. a Florida corporation ("Riverwalk LTD"). as developer, recorded the First Amendment and First Supplemental Declaration of Covenants, Restrictions and Easements (the 'Declaration of Covenants') in Official Record Book 4239 Page 484 of the Public Records of Hillsborough County, Florida. The Declaration of Covenants subjected the property owned by Riverwalk Ltd. including the Subject Property to the covenants, restrictions and easements set forth therein. A copy of the Declaration of Covenants is attached to the Amended Complaint as Exhibit "A" and to the Second Amended Complaint as Exhibit "A". It is incorporated by reference as though attached hereto.

14. The Joinder and Consent of the mortgagees, including City Federal Savings and Loan Association, was attached to the Declaration of Covenants.

15. Article IV. Section 8 of the Declaration of Covenants provides: When titles to all Dwelling Units located upon the Complex Lands have been conveyed to non-Declarant purchasers, or on December 31.

1992, whichever occurs first, or sooner at the Declarant's option. the Declarant shall convey to the Association, by quitclaim deed or deeds, the fee simple title to the Committed Common Properties and such additional Common Properties as have then been committed for the use and benefit of Owners pursuant to the terms of this Declaration; which title shall be free and clear of any liens but subject to:

(1) any real estate taxes and assessments for the year in which the Common Properties are transferred:

(2) any covenants, Conditions, restrictions, reservations, limitations and easements then of record; and

(3) any zoning ordinances then applicable.

16. The 'Association' as referred to in Article IV, Section 8 of the Declaration of Covenants quoted above is defined by Article I, Section 3 to mean the Plaintiff, Marina Club.

17. Article I. Section 8 of the Declaration of Covenants, defines the Committed Common Properties as those portions of The Marina Club of Tampa's Complex Lands designated by the Declarant and committed for Improvements and use as depicted on Exhibit "E" to the Declaration of Covenants.

18. The extent of the property included in the Committed Common Properties and the "additional Common Properties as have then been committed for the use and benefit of Owners" thus owned by MARINA CLUB was not clearly depicted in said Exhibit "E" to the Declaration of Covenants. Exhibit E appears to include that all of the property owned by Riverwalk LTD, save that planned to be submitted to condominium ownership.

19. On November 30, 1983. Riverwalk LTD recorded an instrument styled Amendment to First Amendment and First Supplemental Declaration of Covenants, Restrictions and Easements for The Marina Club of Tampa ("Amendment to Declaration of Covenants"). The Amendment to Declaration of Covenants was recorded at Official Record Book 4652 Page 897 of the Public Records of Hillsborough County. Florida. The Amendment to Declaration of Covenants had as its stated purpose amending Exhibit "E" for the purpose of adding a legal description and correcting the erroneous building designations contained in the site plan drawings. The legal description added by the Amendment to Declaration of Covenants as that of the Subject Property and other lands which subsequently have been committed to condominium form of ownership. Thus in accordance with the Amendment to Declaration of Covenants it appears that all property owned by Riverwalk Ltd was Committed Common Property. A copy of the Amendment to the Declaration of Covenants is attached as Exhibit 2 and is incorporated by reference.

20. On September 23. 1985, Riverwalk LTD conveyed it's interest in the property it owned including all or part of the Subject Property to Riverwalk Investments. Inc. Riverwalk Investment, Inc. was a wholly owned subsidiary of City Federal Savings Bank. The deed from Riverwalk LTD to Riverwalk Investments. Inc. was recorded at Official Record Book 4666 Page 1399 of the Public Records of Hillsborough County. Florida. A copy of this deed is attached to the Amended Complaint as Exhibit "C" and to the Second Amended Complaint as Exhibit "C". It is incorporated by reference as though attached hereto.

21. In December 1989, the Resolution Trust Corporation ("RTC") was appointed as receiver for City Federal Savings Bank. The RTC instituted a foreclosure action against Riverwalk Investments, Inc. as to the property subject to its mortgage.

22. On January 7, 1993 the RTC, as receiver for City Federal Savings Bank, sold the property foreclosed to Mohammed Husein Bhadelia. The Special Warranty Deed from RTC to Mohammed Husein Bhadelia was recorded at Official Record Book 6850 Page 1705 of the Public Records of Hillsborough County, Florida (the "Special Warranty Deed"). A copy of the Special Warranty Deed is attached to the Amended Complaint as Exhibit "E" and to the Second Amended Complaint as Exhibit "E". It is incorporated by reference as though attached hereto.

23. On or about **January 7, 2002**, MARINA CLUB instituted this action to quiet title to the Subject Property and obtain other relief. On or about **June 24, 2002**, MARINA CLUB filed its Notice of Lis Pendens which was recorded at Official Record Book 11732 Page 1108 of the Public Records of Hillsborough County. MARINA CLUB'S Notice of Lis Pendens attached the legal description contained in the Special Warranty Deed. A copy of the Lis Pendens is attached hereto as Exhibit 3 and incorporated herein by reference.

24. On or about **October 14, 2003**, Plaintiff MARINA CLUB, **instituted a Counterclaim to quiet title** to the Subject Property in the action styled **Mohammed Husein Bhadelia: et al.. Plaintiffs. v. Marina Club of Tampa HOA. Inc.. Defendant; Case No. 8:03-cv-1189-T-26TGW (the "Federal Court action")**, pending in the United States District Court, Middle District of Florida, Tampa Division.

In its Counterclaim to quiet title, MARINA CLUB claimed title to the Subject Property pursuant to the duty of Riverwalk LTD and its successors to convey title to the Committed Common Properties to MARINA CLUB on or before December 31, 1992.

25. On or about **October 16, 2003**, MARINA CLUB recorded its Notice of Lis Pendens as to its Counterclaim in the Federal Court action. This Notice of Lis Pendens was recorded in Official Record Book 13219 Page 206 of the Public Records of Hillsborough County, Florida. The legal description attached to this Notice of Lis Pendens likewise utilized the legal description included in the Special Warranty Deed. A copy of this Lis Pendens is attached as Exhibit 4 and incorporated herein by reference.

26. During the Federal Court action the parties were ordered to mediation. At mediation, the parties entered into a Mediated Settlement Agreement (the "MSA"). In the MSA, the parties agreed to entry of a Final Judgment quieting title as to the property described in the Special Warranty Deed. Pursuant to the MSA, title to the Subject Property was to be quieted in the Marina Club. Title to property known as the "Building N Property" and Units L106 and A112 was to be quieted in Mohamed Hussein Bhadelia. (The balance of the property described in the Special Warranty Deed consisted of condominium units which Bhadelia had sold subsequent to obtaining the Special Warranty Deed.)

27. On **February 24, 2005**, United States District Judge Richard Lazzara entered **Final Judgment** in the Federal Court action, **enforcing the MSA** and quieting title to the Subject Property in MARINA CLUB. A copy of

the Final Judgment (with the MSA attached as Exhibit 1 thereto) was recorded at Official Record Book 15500, Page 1223 of the Public Records of Hillsborough County the Final Judgment") A copy of the Final Judgment is attached as Exhibit 5 and incorporated herein by reference.

28. The Final Judgment was appealed by Mohammed Husein Bhadelia to the U.S. Court of Appeals 11 Circuit. The 11th Circuit affirmed the Final Judgment by its Judgment entered July 27, 2005. The Mandate of the 11th Circuit was issued August 31, 2005.

COUNT I - TO QUIET TITLE AS TO ABDUL RAZAK

Plaintiff realleges and reaffirms paragraphs 1 through 28 above as if restated herein in their entirety.

DERAIGNMENT OF TITLE AS TO DEFENDANT RAZAK

Razak Mortgage

30. Defendant, RAZAK, may claim an interest in the Subject Property by virtue of that certain mortgage dated May 30, 1994 and recorded in Official Record Book 7430, at Page 145 of the Public Records of Hillsborough County, Florida (the "Razak Mortgage"). A copy of the Razak Mortgage is attached hereto and incorporated herein by reference as Exhibit 6.

31. RAZAK'S claim to the Subject Property emanating from the Razak Mortgage is void in that it is dependent upon the title of Mohammed Husein Bhadelia. In accordance with the Final Judgment entered in the Federal Court action, title to the Subject Property' was quieted in the MARINA CLUB and against the claims of Mohammed Husein Bhadelia.

Since Mohammed Husein Bhadelia did not hold title at the time the Razak Mortgage was granted (or subsequently) the lien of the Razak Mortgage never attached to the Subject Property.

32. Further, RAZAK'S claims as to the Subject Property pursuant to the above described Mortgage are inferior to and subject to the claims of the MARINA CLUB in that the MARINA CLUB deraigns its title from the Declaration of Covenants, which were recorded prior to the Razak Mortgage. The grant of mortgage by Mohammed Husein Bhadelia to RAZAK came after **December 31, 1992**, the date on which title to the Subject Property was to vest in the MARINA CLUB in accordance with Article IV, Section 8 of the Declaration of Covenants.

33. Further, any lien of the Razak Mortgage terminated, pursuant to Florida Statutes 95.281(1)(a), five years after it matured. As shown by the terms of the Razak Mortgage, it matured on May 30, 1999. Therefore, the lien of the mortgage terminated on May 30, 2004. (See American Bankers Life v. 2275 West Corporation, 905 So.2d 189 (Fla. 3 DCA 2005))

Deed in Lieu to Razak

34. Further, Defendant RAZAK may claim an interest in the Subject Property by virtue of that certain Deed in Lieu of Foreclosure dated August 11, 2005 granted by Mohammed Husein Bhadelia and recorded at Official Record Book 15379 Page 0967 of the Public Records of Hillsborough County, Florida (the 'Deed in Lieu'). A copy of the Deed in Lieu is attached hereto as Exhibit 7 and incorporated by reference herein.

35. RAZAK'S claim to the Subject Property

emanating from the Deed in Lieu is void in that it is dependent upon the title of Mohammed Husein Bhadelia. In accordance with the Final Judgment entered in the Federal Court action, title to the Subject Property was quieted in the MARINA CLUB and against the claims of Mohammed Husein Bhadelia.

36. Further, the Deed in Lieu was placed of record subsequent to the recording of the Lis Pendens in this action and in the Federal Court action. In accordance with Florida Statutes 48.23(1)(b) RAZAK'S claim to the Subject Property emanating from the Deed in Lieu is void.

37. Further. RAZAK'S claim to the Subject Property emanating from the Deed in Lieu is void in that it is not supported by consideration. The Deed in Lieu is granted in satisfaction of the Razak Mortgage. In accordance with Florida Statutes § 95.281(1 a) the lien of the Razak Mortgage terminated on Nov 30, 2004 and therefore is not longer consideration for the conveyance.

WHEREFORE, the Plaintiff MARINA CLUB prays this Court enter an Order:

A. Quieting title to the Subject Property in the MARINA CLUB and against any and all claims of ABDUL RAZAK; and

B. Granting such other relief as this Court deems proper.

**COUNT II- ACTION TO QUIET TITLE AS TO THE
LIEN OF AD VALOREM PROPERTY TAXES**

38. Plaintiff realleges and reaffirms paragraphs 1 through 28 above as if restated herein in their entirety.

39. Defendants ROB TURNER and DOUG BELDEN. as the Property Tax Appraiser and Property

Tax Collector, respectively, have asserted a lien for ad valorem property taxes against the Subject Property. They have identified the Subject Property as Folios 17706 1-0000 and 177241-0000.

40. ROB TURNER, as Property Tax Appraiser, has assessed the Subject Property at its market value based on his mistaken belief that the subject property was owned by Mohammed Husein Bhadelia.

41. The Property Tax Collector has issued and sold tax certificates for delinquent taxes assessed on the Subject Property as follows: Printouts from the Hillsborough County Tax Collector as of 09/13/2005 are attached as Exhibit 8 and incorporated by reference herein.

42. Defendant, WACHOVIA-COLLECTION AGENT FOR SASS MUNI-IV, LLC, is the holder of tax certificate number 93642 for the tax year 2003 on Folio 17724 1-0000.

43. Defendant, HEARTWOOD 14 LLC, is the holder of a tax certificate number 110186 for the tax year 2004 on Folio 17724 1-0000.

44. Defendant, Catherine III LLC, is the holder of tax certificate number 93633 for the tax year 2003 on Folio 17706 1-0000.

45. Defendant, MTAG FOR COLORADO A MGT LLC, is the holder of tax certificate number 110176 for the tax year 2004 on Folio 177061-0000.

46. In accordance with the Final Judgment entered in the Federal Court action, title to the Subject Property has been quieted in the MARINA CLUB which is a homeowners association charged with ownership and maintenance of the common areas of the Marina Club of Tampa. In accordance with Florida Statutes § 193.0235, the assessment of ad valorem taxes against the Subject Property was improper in that it constitutes

common elements of the Marina Club of Tampa.

47. Pursuant to Rule 12D-8.021(2) Florida Administrative Code, ROB TURNER has a duty to correct the assessment in accordance with Florida Statutes § 193.023(5).

48. Pursuant to Florida Statutes § 197.443 and Rule 12D-13.009. DOUG BELDEN has a duty to void the tax certificates issued and sold for tax years 2003 and 2004 as to Folio 177061-0000 and 177041-0000. and make refunds available to the purchasers of said tax certificates.

49. Accordingly the Subject Property must be devalued by the Property Tax Appraiser and the lien for ad valorem property taxes asserted by the Property Tax Collector must be voided. BankUnited Financial Corp. v. Markham, 763 So.2d 1072 (Fla. 4 DCA 1999).

WHEREFORE, MARINA CLUB prays this Court enter an Order:

A. Quieting title in the MARINA CLUB as to the Subject Property and declaring void the lien for ad valorem taxes against the Subject Property;

B. Voiding tax certificates 7642, 110186. 93633. and 110176: and

C. Granting such other relief as this Court deems necessary and proper.

Respectfully submitted on this 3rd day
of October, 2005.

/s/ Susan K. Spurgeon

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